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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of BRENDA E. and  
ARMANDO ESQUEDA, JR.

BRENDA E. LIMON,

Respondent,

v.

ARMANDO ESQUEDA, JR.,

Appellant.

F056845

(Super. Ct. No. VFL221850)

**OPINION**

APPEAL from an order of the Tulare County Superior Court. William Silveira, Jr., Judge. (Retired Judge of the Tulare Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Brenda E. Limon, in pro per., for Respondent.

Armando Esqueda, Jr., in pro per., for Appellant.

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Appellant, Armando Esqueda, Jr. (father), and respondent, Brenda E. Limon (mother), have been involved in a contentious battle for custody of their three children.

In June 2009, this court affirmed an order awarding mother primary physical custody of the children. (*Limon v. Esqueda* (June 12, 2009, F055241) [nonpub. opn.] )

In this appeal, father challenges an order that continues mother's primary physical custody and requires that father's visitation be supervised through family services. According to father, the trial court ignored his evidence and made erroneous factual findings. However, father has failed to provide any relevant argument or legal authority. Accordingly, the order will be affirmed.

### **BACKGROUND**

In June 2008, mother moved for a modification of child custody and visitation. Mother requested that father's visitation be supervised through family services. Mother filed this motion in response to father's having made an allegedly false report accusing mother of sexually molesting their daughter. Mother also sought proof that father had enrolled in individual counseling.

In July 2008, the court ordered that the parties go to mediation and that father's visitation be supervised. A contested hearing was set for August.

At the August contested hearing the court appointed Chad M. Lew as the minors' counsel and instructed Lew to prepare a statement of issues and contentions pursuant to Family Code section 3151. The contested hearing was continued to October 31, 2008.

In ruling on mother's motion, the court considered various documents including Lew's report, the supervised visitation report from family services, and a CART examination transcript pertaining to the parties' daughter. The court found that the parties' daughter did not suffer any abuse at the hands of her mother and that father had coached the child. The court further found that father subjected the children to repeated questioning about their mother and exposed the children to his overreaching concerns and preoccupation with the legal proceedings. The court was also concerned with father's use of medical marijuana and prescription pain medication.

On October 31, 2008, the court ordered that the children were to reside in the primary physical custody of mother and that father was to have supervised visitation. Both parties were ordered to continue with individual counseling until they could effectively participate in co-parenting classes. Upon completion of the co-parenting classes, reunification therapy would be provided for father. Father was also ordered to undergo a substance abuse evaluation. The court scheduled the matter for review in February 2009.

### **DISCUSSION**

In his brief, father criticizes the court's handling of this matter and finds fault with the court's factual findings. According to father, the court ignored evidence, appointed unqualified counsel for the children, and demonstrated bias. However, father cites no applicable legal authority in his brief. This, in itself, is ground for denial of the appeal. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) Nevertheless, we will explain why father's contentions lack merit.

Father asserts the trial court ignored evidence regarding the alleged sexual assault of the parties' daughter, specifically the CART examination transcript. However, the court did not ignore this evidence. Rather, the court considered this transcript, along with the police report, and concluded that the accusation was unfounded and that the child had been coached by father. Father simply disagrees with the court's finding. Contrary to father's position, the record supports the trial court's conclusion. A review of the evidence, in the light most favorable to the order, reveals that a rational trier of fact could have found the facts required to support this finding. As an appellate court, we do not reweigh the evidence or make credibility determinations. (*People v. Maury* (2003) 30 Cal.4th 342, 403.)

Father further accuses the trial court of refusing to acknowledge mother's history of mental illness. Father made the identical argument in his prior appeal. As we noted

then, father fails to understand that the issue before the trial court was mother's condition in 2008, not 2005. There is no evidence of mother having any current mental health issues that would be of concern to the trial court.

Father also disputes the trial court's finding that father clipped pieces of hair from the children's heads for the purpose of having genetic evidence to locate them in the event of a kidnapping. The court characterized father's action as odd and bizarre. Although father denies he took the hair clippings, other evidence in the record supports the court's conclusion. Again, it is for the trial court to resolve credibility issues.

Father additionally contends the trial court was biased. According to father, such bias was the impetus for the court's ordering a substance abuse evaluation despite father's statement that he was not taking prescription pain medication and medical marijuana at the same time. In other words, the court was biased because it did not accept father's statement without question. Contrary to father's position, a credibility determination is not evidence of bias.

Father also argues the court demonstrated bias when it would not permit him to maintain his innocence regarding his use of prescription medication and marijuana. However, that was one purpose of the substance abuse evaluation. The court ordered this evaluation to rule out father's alleged drug use as a factor affecting his ability to interact with his children. Thus, the evaluation was for father's benefit, i.e., it had the potential to support his claim of "innocence."

Father argues bias was further demonstrated by the court's failure to enforce fair rules on both parties. Father contends that he was sanctioned for failing to take their daughter to preschool while mother was merely cautioned to be sure their daughter attends her preschool on time. However, the court did not consider father's failure to take their daughter to school in making its ruling. Father is attempting to relitigate an issue from an earlier hearing under the guise of an unfounded bias allegation.

Finally, father objects to the qualifications of the minors' appointed counsel, Chad M. Lew. According to father, Lew does not have an adequate background in psychology or psychiatry and thus his interviews with the children should not have been considered by the court. However, father did not object to Lew's report at the hearing. Thus, we will not consider the evidentiary value of that report on appeal. (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3.)

### **DISPOSITION**

The October 31, 2008, order is affirmed. Costs on appeal are awarded to respondent.

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Levy, Acting P.J.

WE CONCUR:

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Dawson, J.

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Kane, J.